

United States Senate

October 30, 2019

The Honorable David Bernhardt
Secretary
The Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Bernhardt,

I write to follow-up on my delivery of the Decisionmakers' Handbook, outlining concerns many Montanans have with the Confederated Salish and Kootane Tribes (CSKT) Water Compact in Montana. The CSKT Water Compact is the most expansive water settlement in history, settling over 10,000 water rights claims across over 70% of irrigated land in Montana. Indian water rights settlements serve an important purpose to uphold the federal trust responsibility to our Tribal nations and many Montanans support enactment of this Compact to protect their water use across the state. The CSKT Water Compact is unique in several ways, including its reservation of a substantial amount of water rights beyond the CSKT Indian reservation boundaries. Many Montanans including those who live and work in areas where these off-reservation water rights would be reserved for the CSKT are opposed to the Compact.

Instead, these Montanans have offered an alternative Compact, the People's Compact. They have presented their arguments for review in their Decisionmakers' Handbook. As promised to my constituents, I have delivered this Handbook to you for review and have requested your consideration of the merits of their arguments. I want to ensure the proposed People's Compact gets a fair analysis from the Trump Administration. As a follow-up, as outlined in the Decisionmakers' Handbook, below are concerns raised by constituents opposed to the CSKT Water Compact:


- The Compact does not fall within the scope of the Winters Doctrine, the federal reservation of land, or federal reserved water rights law and precedent;
- Does not quantify the Tribes' federal reserved water rights;
- Creates and awards new non-federal "tribal reserved water rights geographically located outside of the exterior boundaries of the reservation;
- Enacts a Fifth Amendment taking of non-Indian water rights and power reserves within a federal irrigation project that was statutorily designed to serve all residents, not just the CSKT;

- Removal of the management and administration of the water rights of 30,000 Montana residents from the protections of the state constitution, denying the due process of state courts, and places them under tribal jurisdiction;
- Enables federal co-ownership of state water resources, breaking the long-standing and historic dividing line between state and federal governments regarding their authority over state water resources.

While not exhaustive, the concerns raised above are central to many of their concerns. A thorough and objective legal assessment of these points above will provide much needed insight as I and Montanans determine a path forward and craft resolution to long-fought and age-old water rights disputes across our state.

Thank you for your consideration. I look forward to your response.

Sincerely,


STEVE DAINES
U.S. Senator